

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Pay Telephone)	
Reclassification and Compensation)	CC Docket No. 96-128
Provisions of the Telecommunications)	
Act of 1996)	

**REPLY COMMENTS OF GLOBAL
CROSSING NORTH AMERICA, INC.**

Global Crossing North America, Inc. (“Global Crossing”) submits this brief reply to the comments received in response to the Commission’s Further Notice of Proposed Rulemaking in the above-docketed proceeding.¹ The comments – as disparate as they are – reflect one underlying theme: the Commission should adopt a simple, unified system that actually has a chance of working. Because there is no single party that can individually track calls in a multiple-carrier environment from origination until the called party actually answers the telephone, the Commission’s continued reliance on its current definition of “completed call” will not produce such a system. If the Commission wishes to end – or at least minimize – this long-standing controversy, it should take one of two approaches: either adopt a “calling-party-pays” system² or adopts either a timing

¹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. 96-128, Further Notice of Proposed Rulemaking, FCC 03-119 (released May 28, 2003).

² *See* Sprint at 19-21; Worldcom at 29-34.

The distinction between “calling-party-pays” and “carrier-pays” is actually more illusory than real. In either case, the calling party will end up paying. The only question is whether the calling party will pay for the cost of the call or will also be saddled with the significant transaction costs attendant to a system where the carrier pays in the first instance.

surrogate or bases compensation on call attempts with an appropriately discounted per-call rate.³

However, if the Commission wishes to adopt a system based upon its underlying completed-call methodology, there are two points it must bear in mind.

1. Any attempt to place ultimate financial responsibility on the carrier that is not the primary economic beneficiary of the payphone call will likely not survive appellate review. The D.C. Circuit has already vacated one Commission rule that purported to require one group of carriers to shoulder the financial burden that properly should have been placed on others.⁴ The Commission itself has recognized that this type of shifting of financial responsibilities is: (a) inequitable; and (b) foreclosed by *Illinois*.⁵ As such, the so-called “first-switch” rule – to the extent that it seeks to shift ultimate financial responsibility onto underlying carriers – is not sustainable and, for that reason alone, should not be adopted.

2. If the Commission wishes to adopt some modified version of the “first-switch” rule, where underlying carriers act as payment agents – and *only* as payment

³ See Global Crossing at 6-8; see also APCC at 28-30.

If the Commission opts for this route, it should promptly issue a notice requesting the parties to provide hard, factual data from which the Commission could select an appropriate surrogate or discounted, pr-call rate.

The complaint of Telstar, *et al.* (at 12-19) that a proxy methodology or call attempt methodology would dramatically increase the costs of SBRs is not necessarily correct. To the extent that the Commission utilizes a correct call duration methodology, which may, for example, differentiate international from domestic calls, or sets an appropriately-discounted per-attempt rate, this perceived problem can be eliminated or at least substantially mitigated.

⁴ See *Illinois Public Telecommunications Ass’n v. FCC*, 117 F.3d 555, 565 (D.C. Cir. 1997), *cert. denied*, 523 U.S. 1046 (1998).

⁵ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. 96-128, Fifth Order on Reconsideration and Order on Remand, 17 FCC Rcd. 21274, ¶ 87 (2002).

agents – for switch-based resellers (“SBRs”), that system might survive appellate review, but only if it takes certain principles into account.

a. *Underlying carriers are merely payment agents for SBRs.* The ultimate financial responsibility remains with SBRs, while the underlying carriers act as agents in aggregating data and payments on behalf of themselves and their SBR-customers. In the event of any dispute over payments that relate to toll-free numbers or access codes served by SBRs, the dispute is between the payphone service providers (“PSPs”) and the SBRs. Any further financial burden placed on underlying carriers would run afoul of *Illinois*.

b. *Underlying carriers are entitled to rely upon the data submitted to them by SBRs.* In comments, various SBRs have represented: (a) that they are the only entities that are capable of determining whether a call has actually been completed to the called party;⁶ and (b) they are perfectly capable of tracking calls and paying compensation.⁷ Even if the Commission envisions a limited intermediary role for underlying carriers, it should take the SBRs at their word. The SBRs, therefore, should be accountable for the veracity of their own data and underlying carriers cannot be held responsible for such data.⁸

⁶ See, e.g., IDT at 15.

⁷ See, e.g., IDT at 16-17.

⁸ In this regard, Global Crossing would not object to a modification of the Commission’s reporting requirements that would accommodate this principle. Thus, data should be reported by carrier, that is, it should report on whose behalf payment is being made and identify payments by payphone ANI and toll-free number or access code. Global Crossing would also not object to a requirement to report uncompleted as well as completed calls.

The corollary is also true. The data collected by PSPs in the first instance should be entitled to virtually no weight. Even the PSPs admit that they cannot track calls to completion. See APCC at 22, 24; Qwest at 3-4. Thus, in the absence of fraud or other indications of misconduct, the Commission should accord virtually conclusive weight to carrier data. See Global Crossing at 11-12.

c. *Underlying carriers are entitled to recover from SBRs their costs of performing the functions assigned to them by the Commission.* A number of SBRs complain about the charges that are being levied upon them by the underlying carriers. The SBRs also assert that, they too, incur costs in complying with the Commission's payphone compensation regulations.⁹ This complaint and this observation are essentially irrelevant. The Commission's rules undeniably impose costs on underlying carriers. The Commission cannot – with being completely arbitrary – refuse to permit underlying carrier to recover those costs. The SBRs have presented no case for the Commission to interfere in this process.

For the foregoing reasons, the Commission should act upon the proposals contained in the Further Notice in the manner suggested herein and in Global Crossing's comments.

Respectfully submitted,

Michael J. Shortley, III

Attorney for Global Crossing
North America, Inc.

1080 Pittsford-Victor Road
Pittsford, New York 14534
(585) 255-1429

July 2, 2003

⁹ See Joint SBRs at 6-7.

Certificate of Service

I hereby certify that, on this 2nd day of July, 2003, the foregoing Reply Comments of Global Crossing North America, Inc. were served by first-class mail, postage prepaid, upon the parties on the attached service list.

Michael J. Shortley, III

Service List

Vistronics, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

John E. Benedict
H. Richard Juhnke
Sprint
Suite 400
401 Ninth Street, NW
Washington, DC 20004

Jonathan A. Dibble
Floyd A. Jensen
Ray Quinney & Nebeker
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, UT 84145-0385

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1424 16th Street NW, Suite 105
Washington, DC 20006

Michael K. Kellogg
Aaron M. Panner
Kellogg, Huber, Hanson, Todd & Evans
Sumner Square, Suite 400
1615 M Street, NW
Washington, DC 20036

Danny E. Adams
Steven A. Augustino
Kelley Drye & Warren
1200 Nineteenth Street, NW
Suite 500
Washington, DC 20036

Albert H. Kramer
Robert F. Aldrich
Dickstein Shapiro Morin & Oshinsky
2101 L Street NW
Washington, DC 20037-1526

Ky E. Kirby
Kathleen L. Greenan
Swidler Berlin Shereff Friedman
3000 K Street NW, Suite 300
Washington, DC 20007

Lawrence Fenster
MCI WorldCom, Inc.
1133 Nineteenth Street NW
Washington, DC 20036-3604

Teresa Marrero
AT&T Corp.
1120 20th Street, N.W.
Washington, D.C. 20036